IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 7630 of 2001
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH PRANJIVAN PALA

Versus

STATE OF GUJARAT

Appearance: MR SHIRISH JOSHI for the Petitioner
Mr.H.D. Dave, Assistant GOVERNMENT PLEADER,
for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 1-2
MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/08/2002

ORAL JUDGEMENT

Rule. With the consent of the parties, the matter is taken up for hearing today. The father of the petitioner died in the year 1998 while he was in Service. After his death, the petitioner applied for getting compassionate appointment and his application is annexed at page 32 dated 10th June, 1999. The said application was rejected on behalf of the Health, Medical Services and Medical Education Department, Gandhinagar. While rejecting the said prayer on behalf of the petitioner, it is stated that since the income of the family of the deceased is more than the stipulated income, the petition is rejected. It is argued by Mr.Joshi that the

Department has taken into account the family pension income which the family is receiving. Of course, there is nothing on record to understand the nature of the income taken into consideration, as reading the order at page 35, it is not very clear as to what type of income was taken into consideration. However, if family pension income is taken into consideration, that cannot be done in view of the judgment of this Court reported in 1998(1) GLH (UJ) 23. Following the decision in 1998(1) GLH (UJ), in so many matters, this High Court has held as under :-

... ...

3. Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court in the case of C.B. Maru v. Dhanduka Nagar Panchayat, reported in 1993(2) G.L.H. 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v. State of Gujarat and Ors., reported in 1998(1) GLH (UJ) 23. In C.B. Maru's case (supra), this Court while placing reliance in the case of Smt. Phoolwati v. Union of India and ors., reported in AIR 1991 SC 469, has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/- per month and her husband had died on 15th October, 1990. In the case of C.B. Maru (Supra), the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the

income may have exceeded Rs.1,000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B. Maru (Supra), the date of the death of deceased is October, 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 50% Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (Supra) this Court, while placing reliance on C.B. Maru's case (supra), has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1,000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's

> application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date a copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this Order and for that purpose, direct service is permitted.
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> ... ..."

At page 31, the authority seems to have taken into consideration the family pension income, which the family of the petitioner is receiving. In my view, that cannot be taken into consideration.

Under the circumstances, the matter is remanded to the State Government. The State Government is directed to take a fresh decision in the matter. At the time of taking fresh decision, pension income which the family of the deceased is receiving may not be taken into consideration and, ultimately, while arriving at the income, excluding family pension income, the Department may consider any other income the family is receiving, within a period of two months from today.

The petition is partly allowed. Rule is made absolutely to the aforesaid extent with no order as to costs.

Writ to be sent forthwith.

(P.B. Majmudar, J.)

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(apj)